

## KENYA'S REFUGEE ACT 2021: Opportunities for Refugee Livelihoods and Self-Reliance, Part 1

The aim of this series is to analyze Kenya's refugee Act 2021 in light of Kenya's [Comprehensive Refugee Response Framework \(CRRF\)](#) with a specific focus on its role in promoting refugee self-reliance. This first brief will analyze the critical components of the new law in relation to refugee livelihoods and self-reliance.

### Introduction

The CRRF is a crucial part of the [New York Declaration for Refugees and Migrants](#) and forms an integral part of the [Global Compact on Refugees \(GCR\)](#) whose main objectives include easing pressure on host countries, enhancing refugee self-reliance, expanding access to third country solutions and supporting conditions in countries of origin for return in safety and dignity.<sup>1</sup> The purpose of the CRRF is to provide a more systematic and sustainable response that benefits both refugees and the communities that host them through a multi-sectoral approach that engages a broader range of stakeholders.<sup>2</sup> It hopes to bring about predictability in responses towards emergency and protracted refugee situations as well encourage sustainability in such responses by linking humanitarian and development efforts. The New York Declaration and the GCR are a culmination of international consultations that resulted from the 'refugee crisis' of 2015.<sup>3</sup> The deaths of thousands of refugees and migrants who sought to reach the shores of Europe drew attention to the inhumane costs associated with the absence of international cooperation to share the burden and responsibility for hosting and supporting the world's refugees disproportionately borne by middle- and low-income countries that host a majority of refugees and migrants from troubled countries. Kenya launched its CRRF titled "[Support for host community and refugee empowerment \(SHARE\)](#)" in October 2020. This signaled its intent to implement the commitments made under the New York Declaration and GCR. It should also be noted that Kenya is party to a number of regional instruments on migration that include the [Djibouti Declaration on Refugee Education](#) in IGAD Member States and the [IGAD Kampala Declaration on Jobs, Livelihoods, and Self-reliance](#). These instruments complement the commitments made under the global agreements. The emphasis on promoting refugee self-reliance is salient following the Covid-19 pandemic that has disproportionately affected refugees and other displaced persons.<sup>4</sup> Refugee livelihoods are predominantly reliant on the informal sector which has borne the brunt of lockdown measures. These measures have resulted in massive layoffs among the refugee working population. This situation has been made worse by the fact that those working within the informal sectors seldom have access to social protection including social safety nets. The GCR emphasizes the need to foster inclusive economic growth for host communities and refugees. This is a recognition of the economic capacities of refugees including their skills, talents, and aspirations for self-reliance. This brief aims to analyze the extent to which the new [Refugee Act 2021](#) will facilitate the implementation of

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<sup>1</sup> United Nations, Global Compact on Refugees 2018.

<sup>2</sup> UNHCR, The New York Declaration for Refugees and Migrants Answers to Frequently Asked Questions.

<sup>3</sup> Gillian D Triggs and Patrick CJ Wall, 'The Makings of a Success': The Global Compact on Refugees and the Inaugural Global Refugee Forum, *International Journal of Refugee Law* (2020) Vol 32, No 2, 283–339.

<sup>4</sup> UN High Commission for Refugees (UNHCR) (2020a), Mid-year Trends 2020, Geneva, <https://www.unhcr.org/statistics/unhcrstats/5fc504d44/mid-year-trends-2020.html>

Kenya's CRRF, particularly the commitment on promoting refugee livelihoods and self-reliance. This Act repeals the Refugee Act 2006. The repealed Act was a relic of the restrictive refugee policy that has historically been in place in Kenya since the 1990s. The Refugee Act 2021 signals a break with that past as Kenya seeks to embrace the spirit of the GCR. For analysis of how the Refugee Act 2021 will promote refugee self-reliance, reference will be made to regional instruments.

### Kenya's CRRF and the reforms of the Refugee Act 2021

Under its CRRF, Kenya outlined three pillars, namely:

1. Enhancing the protection space for asylum seekers and refugees.
2. Supporting immediate and ongoing needs for asylum seekers, refugees and host communities.
3. Promoting regional cooperation and international responsibility sharing in the realization of durable solutions for refugees.

This brief will focus on pillar two under which refugee livelihoods and self-reliance is placed. Under this pillar, a number of challenges are identified as a hinderance to refugee self-reliance. They broadly fall within five arms, namely: (1) lack of documentation and non-recognition of issues documentation; (2) legal and policy barriers on access to work opportunities including freedom of movement access to work permits, business licenses and other documents; (3) inadequate access to skills training; (4) financial exclusion; and (5) exclusion from development planning at the county level-beyond the 'refugee- hosting' areas<sup>5</sup> and at the national level.

The CRRF proposes strategic responses to eliminate the above-named challenges with the hope of enhancing the ability of refugees living in Kenya (both camp and urban) to attain self-reliance. The proposed responses presuppose the need for an overhaul of the legal and policy framework on refugee protection. The presupposition to promote a conducive policy and legislative environment to foster refugee self-reliance and livelihoods is recognition that for a long time the greatest hinderance to refugee self-reliance has been a hostile legal and policy framework. The Refugee Act 2021 is the first step towards remedying the situation. This law forms the basis of the domestication of the [1951 Convention](#) and the [1967 Protocol](#) and [1969 OAU Convention](#) relating to refugees that have been ratified by Kenya as well as all non-binding international and regional instrument relating to refugees that Kenya is a party to. We proceed to look at the specific provisions of the Act that respond to the challenges identified in the CRRF. The brief will highlight three changes in the law that seek to entrench refugee self-reliance, namely: (a) the right to work, (b) the right to access documentation, (c) the status elevation of the refugee identity document and (d) the right to participate in formulation of development plans.

The first major reform of the Act is that a refugee's right to engage in gainful employment or enterprise is guaranteed.<sup>6</sup> This is a monumental reform as it categorically recognizes the right of refugees to work. This provision underpins all efforts to foster refugee self-reliance and economic inclusion in the country. As necessary as it is that the Act enumerates the right to work, that alone is insufficient. Without

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<sup>5</sup> The refugee hosting areas include the counties of Turkana and Garissa. These two counties have robust refugee inclusion mechanisms. The Kalobeyei Integrated Socio-Economic Development Plan (KISED) and the Garissa Integrated Socio-Economic Development Plan (GISED) plans offer a path for refugee inclusion in county development.

<sup>6</sup> Section 28(5).

corresponding compliance, enforcement and remedy mechanisms the right is bound to remain illusory.<sup>7</sup> To further ensure that the right to work is attained, the Act outlines the right of refugees to access and be issued with documentation to facilitate their ability to undertake economic activities.<sup>8</sup> This provision seeks to remedy the issue of lack of documentation to facilitate refugee's ability to participate in livelihood activities, such documentation may include registration documents, work permits, business licenses and movement passes. The right to work is contingent on refugees having access to status recognition which facilitates access to refugee identification documents. Possession of identity documents allows refugees to pursue access to other subsidiary documents that would allow them to lawfully engage in economic activities. The right to documentation is also crucial in ensuring that the relevant government authorities at the county and national level do not frustrate the efforts of refugees in accessing these documentations. The full implementation of this provision is subject to the issuance of respective guidelines and regulations to operationalize it. These guidelines may include the streamlining of application processes and platforms for refugees to reduce waiting periods and fostering coordination between government departments to reduce duplication of roles relating to issuance of documents.

The Act elevates the status of the refugee identity card to a similar status as the alien card thereby providing a legal basis for the recognition of the document for the purpose of access to both public and private services.<sup>9</sup> Refugees face incredible difficulty in gaining timely access to identity documents. This has the adverse effect of denying them the opportunity to seek work permits, movement passes and business licenses to engage in livelihood activities. Upon issuance of the identity documents, refugees face an additional challenge in accessing other services including education, financial and social services due to the fact that these documents are not recognized by various private and public service providers. This is usually a function of either a lack of awareness on the part of service providers regarding refugee documents or the lack of inter-linkages between different government databases leading to lack of recognition of relevant documentation. For instance, one cannot open an Mpesa account or a bank account using their refugee identity card. With the ubiquitous use of Mpesa for economic activities, an inability to use Mpesa severely limits one's ability to fully participate in economic activities. This comes at an opportune time to enable refugees access education services including vocational skills; access financial services and other social services. Relevant regulations will be crucial in facilitating the inter-linkage of the refugee database to other government databases like NIMS.

The Act mandates the national and county governments to take into consideration refugee matters when formulating sustainable and environmental plans.<sup>10</sup> This provision will offer opportunity for the inclusion of refugees in the formulation of county integrated development plans (CIPDs) that guide counties overall framework for development for year periods. The CRRF recognized the need to include refugees in economic development planning in order to catalyze economic development for both host communities and refugees. This is an important element of ensuring that refugee-hosting areas take into consideration the unique opportunities for and challenges facing refugees and host-communities. Such inclusion will peace and cohesion between refugees and host communities above and beyond the economic dividends. At the moment, Turkana and Garissa counties that host Kakuma and Dadaab refugee camps respectively

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<sup>7</sup> Roger Zetter and Héloïse Ruadel, *Refugees' Right to Work and Access to Labor Markets – An Assessment* (2016) pp 11.

<sup>8</sup> Section 28(4).

<sup>9</sup> Section 28(7).

<sup>10</sup> Section 35.

promote the participation of refugee and host communities in development planning.<sup>11</sup> However, refugee participation in other counties is minimal or nonexistent despite the fact that refugees reside in these counties. Refugee participation in development planning should be adopted in all counties to facilitate prioritization of their needs and identification of interventions to foster refugee self-reliance. To do so, guidelines will be crucial in developing a framework for the participation of refugees in the formulation of these plans. Additionally, there is need to allocate more resources to the Department of Refugee Services to facilitate refugee participation in development planning at the national level.

### Conclusion

From the foregoing analysis, the Act conveys a clear intent to foster refugee self-reliance in accordance with the commitments made under the CRRF. Its provisions seek to streamline the issuance of documents that are crucial in enabling refugees participate in livelihood activities, access financial and other services from both government and public institutions and most importantly give refugees a voice in the formulation of development plans. These are clear wins that herald a new era of refugee protection in Kenya. However, the Act remains silent on the freedom of movement and continues the encampment policy by establishing designated areas for refugee settlement. The continuation of the encampment policy will continue to present a great limitation on the ability of refugees to access and participate in livelihood activities. As the promulgation of relevant guidelines and regulations to operationalize the Act is still underway, the jury is still out on whether this Act will make a mark in the implementation of the CRRF's goal to foster refugee self-reliance.

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<sup>11</sup> Michael Owiso and Farah Manji, Localization and participation within the rollout of the Comprehensive Refugee Response Framework in Kenya (2020) pg 8.